say: "We enact *this* in the United States because you have enacted *the same* in your territory." In the foreign case there is no *accord* between the rules—they do not apply to the *same* place nor to the *same* (although to a like) subject-matter.

In the domestic case there is not only accord between the rules, but they are the very same in terms—operate in the same place, over the same subject-matter, and the donor and the donee of the power are at one. But there is no donor in the other case. The attitude of Congress is anything but that of donor; it is that of an adversary. It makes the regulations, that it may be a donee. In the one case the legislature gives away its legislative power; in the other it makes the utmost exertion of the power possible. It operates extra-territorially and beyond its jurisdiction, by a vigorous, hostile and unsparing exercise of its power within its jurisdiction against all subjects of the foreign power, whose will the advocates of local option would have us believe we thereby propose to gratify to the same extent and with the like subserviency that a legislature does, which declares its laws shall take effect only when the people choose to consider them binding.

RECENT AMERICAN DECISIONS.

Supreme Court of Missouri.

GARRITT C. LAUD *v.* H. C. HOFFMAN ET AL.

A railroad corporation cannot lawfully take, hold and deal in real estate for other purposes and to a greater extent than it is authorized so to do by its charter, but the amount of lands which such corporation can legally hold, can only be determined by a direct proceeding against the same by the state for a violation of its charter.

While a contract to convey to such corporation land which is not to be used for the purpose for which it is authorized by its charter to hold real estate cannot be specifically enforced in a court of equity, yet a deed made to such corporation, and by the corporation to a third party, operates to convey all the title of the original grantor.

THE opinion of the court was delivered by

ADAMS, J.—This was an action of ejectment. Both parties claimed under one James C. McKeehan, who was the patentee under the United States for the land on which the lot in controversy was situated.

The defendants claim title through the Pacific Railroad Company, or rather through Frederick S. Bellon, trustee for the sole

use and benefit of the Pacific Railroad Company. The deed to Bellon embraced one hundred and fifty-one town lots, distributed alternately throughout the town of Knob Noster, situated on the line of said railroad, and five and a half acres of depot grounds, and was executed to the said trustee in 1858, for the use of said company, for and in consideration of the sum of one dollar and the benefits which the grantor expected to obtain from the location of a passenger and freight station upon the land thereby conveyed; and the deed also authorized a sale by the trustee of all such portions of the real estate thereby conveyed, as should not be required for the purposes of said road, at such time and in such manner as the board of directors of said company should deem most conducive to the interest of said company.

The defendants claimed title under and through this conveyance to Bellon, and have the oldest paper title, provided the deed to Bellon as trustee is valid.

Numerous instructions were given and refused, raising the question as to the power of the Pacific Railroad Company to take, hold and dispose of the lands in question; and the Circuit Court having decided these questions in favor of the defendants, the plaintiff has brought the case here by appeal.

The question as to the power of the Pacific Railroad Company to receive grants of land, and to dispose of them, depends upon the proper construction of its charter and the laws of this state referring thereto.

By the first section of the charter, among other things, it is provided that it "may hold, use, possess and enjoy the fee simple or other title in and to any real estate, and may sell and dispose of the same." (See Laws of Missouri, 1849, p. 219.)

The seventh section of this act was amended in 1851 (see Laws of 1851, § 9, p. 272), when it was provided that "said company shall have power to locate and construct a railroad, &c., and for that purpose may hold a strip of land not exceeding one hundred feet wide, except where it may be necessary for turn-outs, embankments or excavations, in which case they may hold a sufficient width for the preservation of their road, and may also hold sufficient land for the erection and maintenance of depots, landing-places or wharves, engine-houses, machine-shops, warehouses and wood and water stations."

Section twenty of the Act of 1849, above referred to, provides

that "the operations of said company shall be confined to the general business of locating, constructing, managing and using said railroad, and the acts necessary or proper to carry the same into complete and successful operation."

By section fifty-seven of an act entitled "An Act to authorize the formation of railroad associations, and to regulate the same," approved December 13, 1855, it is provided that "all existing railroad corporations within this state, and *such as now* or may be hereafter chartered, shall respectively have and possess all the powers and privileges contained in this act, and they shall be subject to all the duties, liabilities and provisions not inconsistent with the provisions of their charter contained in this act."

Among the privileges referred to in this section are those contained in section 29 of the same act (see First Revised Laws, 1855, p. 425), which provides that such company may "take and hold such voluntary grants of real estate and other property as may be made to it to *aid* in the construction, maintenance and accommodation of its railroad, but the real estate received by voluntary grant shall be held and used for the purpose of such grant only."

It may also "purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad and the stations and other accommodations necessary to accomplish the object of its incorporation."

From these enactments it is evident to my mind that it was the intention of the legislature to invest the Pacific Railroad Company with power to take two classes of real estate; one class it had the right to receive and dispose of at pleasure, for the purpose of aiding in the construction of its road, or for raising funds to pay debts contracted in its construction, &c.; the other class it can only hold for depots, road-beds, &c.

The history of the country shows that this is the proper construction of the acts referred to. From the time the charter was granted, donations of real estate to aid in its construction have been made all along the line of the road, and titles have been acquired and investments made on the faith of this being the proper construction of the charter. It is true that this company, like all other corporations, is subject to all the limitations expressed in the charter, but the charter and the laws above referred

to expressly authorize grants of land to be made to aid in the construction of the road.

The state considered this railroad company able to receive the lands donated by Congress without any enlargement of its charter, and accordingly made the grant to aid in construction of the main trunk line to the bifurcation of the south-west branch, and from that point to apply the lands to the south-west branch.

Although this railroad company may receive grants of land, and sell and dispose of the same for the purposes of its construction and payment of its debts, &c., it cannot become a larger landed proprietor for purposes not connected with its creation. But the amount of lands it may receive cannot be decided between these parties; conceding the power to receive lands for the purposes aforesaid, no one, except the state, can raise the question as to the amount that may be received. This was decided by this court in the case of *Chambers* v. *The City of St. Louis*, 29 Mo. Rep. 576–7; also by the Supreme Court of the United States in the case of *Meyer* v. *Croft*, reported in 11 American Law Register 308; see also, to the same effect, *Smith* v. *Sheely*, decided by the Supreme Court of the United States at the December Term 1871.

Judge SCOTT, in *Chambers* v. *City of St. Louis*, says, delivering the opinion of the court, "There being a right in the city to take and hold lands, if there is a capacity in the vendor to convey, so soon as the conveyance is made there is a complete sale, and if the corporation in purchasing violates or abuses the power to do so, that is no concern of the vendor or his heirs. It is a matter between the state and the city."

So this question can only arise in a direct proceeding by the state against the Pacific Railroad Company, and not in a collateral proceeding like this.

The case of the *Pacific Railroad Co.* v. *Seeley's Heirs*, 45 Missouri 212, was a suit in equity for the specific conveyance of lands, and not an executed conveyance. That case went off on the ground that the contract in question upon its face showed that it was against public policy. The petition was demurred to and the demurrer was sustained by the Circuit Court, and the judgment of the Circuit Court was properly affirmed by this court, on the ground that the contract was void as being against public policy.

There is a manifest distinction between executory and executed contracts; whilst a party may not be compelled by a court of equity to carry a contract into specific execution, yet if he should voluntarily make a deed, it will be good to pass all his title.

The case of *The State* v. *Commissioners of Mansfield*, 3 Zabriskie's Rep. (N. J.) 510, so strongly relied on by the counsel for appellants, is not in conflict with any of the doctrines here laid down.

In that case the Camden and Amboy Railroad and Transportation Company claimed that certain real estate, consisting of houses and lots owned by that company and let by them to their workmen and employees, were exempt from taxation under a clause in their charter exempting the "company from all further taxation." The court held that this property was liable to taxation, whilst the road-bed, turnouts, &c., were exempt, thereby holding that there were two classes of real estate which the company had the power to acquire and hold, the one being liable to taxation and the other exempt. The same doctrine was maintained in Massachusetts in the case of *The Inhabitants of Worcester* v. *The Wilson Railroad Corporation*, 4 Met. 564, which is looked upon as a well-considered case. See also *Whitehead* v. *Vinyard*, decided at St. Louis by this court, at the March Term 1872, not reported.

Under the view we take of this case, the judgment must be affirmed.

The above decision will be read with great interest by the people of the state in which it was rendered. There has been in Missouri a large amount of railroad town speculation. Counties have subscribed liberally to the building of railroads, with the understanding that when constructed they were to pass through and thus benefit certain towns and cities therein; and towns and cities have subscribed expecting they were to pass through their incorporated limits; but not unfrequently the railroad companies would purchase, or take by gift, lands adjoining or lying near to such municipalities, and with the aid of their railroad lay off and establish new towns or additions—thus destroying the value of the property of their benefactors to fill their own treasuries.

But as a general thing such lands were immediately laid off into town-lots and sold to third parties, who entered upon and improved them under their titles from the railroad companies.

The companies in such instances were only authorized by their charters to hold lands sufficient for their road-beds, depots, landing-places, &c.

In this condition of things the Supreme Court of Missouri, in the case of the *Pacific R. R. Co.* v. *Seeley et al.*, 45 Mo. 312, which was a suit for specific performance of a contract to lay off into town-lots one hundred and sixty acres of land, and to make a deed to an undi-

vided fourth part thereof to the railroad company, held that the company had no power or capacity under its charter to take or hold the property. The court says: "The act of incorporation gave the plaintiff the power to acquire a strip of land, not exceeding one hundred feet wide, for a right of way, and to hold sufficient ground for the erection and maintenance of its depots, landing-places or wharves, engine-houses, offices, machine-shops, and wood and water stations; but it conferred upon it no authority to became a real estate broker or speculator in town-lots. I think the contract, so far as it proposed to invest the company with the title to the lots, was utterly void."

The general principles on which this case was made to turn, as stated by Chief Justice MARSHALL, in *Dartmouth College* v. *Woodward*, 4 Wheat. 518, that "A corporation being the mere creature of law, possesses only those properties which the charter of its incorporation confers upon it, either expressly or as incidental to its very existence," is recognised by all the cases: *Beaty* v. *Knowles*, 4 Pet. 152.

When the decision in *Pacific R. R. Co.* v. *Seeley et al.* was made, it was generally thought that it would unsettle the title to all property held by deeds from the railroad companies throughout the state, but the effect of the above decision is to render such titles perfectly good, and by a process of reasoning which we think is wholly unanswerable.

In *Smith* v. *Sheeley*, 12 Wall. 35, the Supreme Court of the United States decided that the capacity of a corporation to take and hold real estate could not be raised collaterally. The court says: "It is insisted, however, as an additional ground of objection to this deed, that the bank was not a competent grantee to receive title. It is not denied that the bank was duly organized in pursuance of the provisions of an act of the legislature of the territory of Nebraska, but it is said it had no right to transact business until the charter creating it was approved by Congress. This is so, and it could not legally exercise its powers until this approval was obtained; but this defect in its constitution cannot be taken advantage of collaterally. No proposition is more thoroughly settled than this, and it is unnecessary to refer to authorities to support it. Conceding the bank to be guilty of usurpation, it was still a body corporate *de facto*, exercising at least one of the franchises which the legislature attempted to confer upon it; and in such a case the party who makes a sale of real estate to it is not in a position to question its capacity to take the title after it has paid the consideration for the purchase."

In the subsequent case of *Myers* v. *Croft*, 13 Wall. 291, s. c. 11 American Law Register 308, the same court says: "In relation to the first objection, that the Sulphur Springs Land Company was not a competent grantee to receive the title, it is sufficient to say, in the absence of any proof whatever on the subject, that it will be presumed the land company was capable, in law, to take a conveyance of real estate. Besides, neither Fraily, who made the deed, nor Myers, who claims under him, is in a position to question the capacity of the company to take the title after it has paid to Fraily full value for the property."

The result of these decisions is, that neither a grantor, or any one claiming under him, can question the capacity of the grantee to take and hold real estate, and therefore a title coming through a railroad or other corporation, is good, without reference to the charter, as against such vendor and his privies.

H. B. JOHNSON.